4285
A.B.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 288

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, APPELLANT,

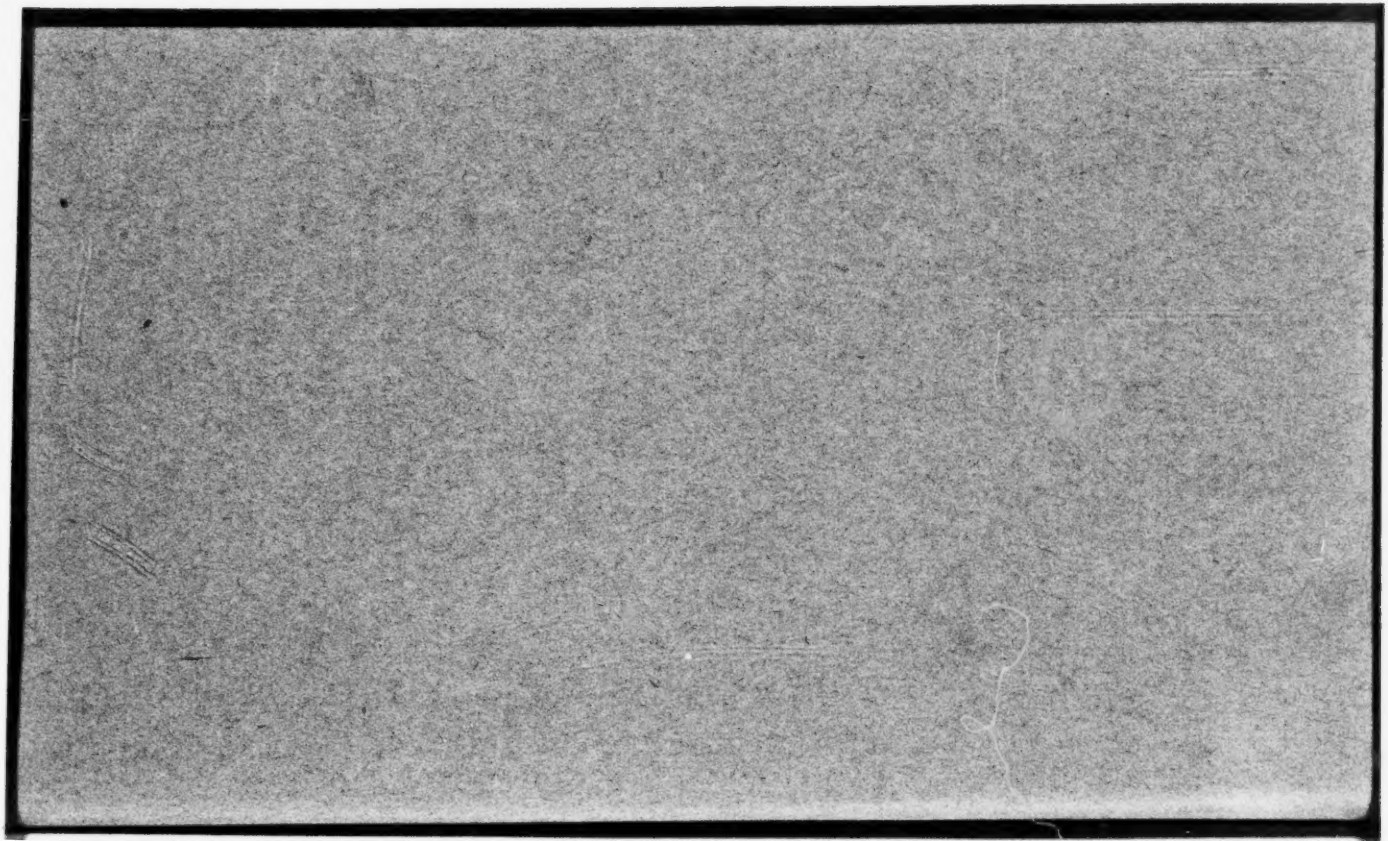
vs.

J. M. LUNA, CHAIRMAN, AND HUGH H. WILLIAMS AND BONIFACIO MONTOYA, MEMBERS, CONSTITUTING THE STATE CORPORATION COMMISSION OF NEW MEXICO, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW MEXICO

FILED JUNE 7, 1924

(30,401)



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SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 30, 1924

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[fol. 1] CITATION—In usual form, showing service on Milton J. Hilmick; filed April 30, 1924; omitted in printing

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[fol. 2] CAPTION—Omitted

IN UNITED STATES DISTRICT COURT

BILL OF COMPLAINT—Filed January 8, 1924

To the Honorable the Judge of the United States District Court for the District of New Mexico:

Fidelity and Deposit Company of Maryland, a body corporate, brings this its bill of complaint against J. M. Luna, Chairman, and Hugh H. Williams and Bonifacio Montoya, members, constituting the State Corporation Commission of New Mexico, and L. B. Gregg, State Bank Examiner of New Mexico, and complaining, says:

1. Your orator, Fidelity and Deposit Company of Maryland, is a corporation duly incorporated under the laws of the State of Maryland and is a citizen of the State of Maryland and a resident of the State and District of Maryland. Each of the defendants is a citizen of the State of New Mexico and a resident of the State and District of New Mexico. The defendant J. M. Luna is the chairman and the defendants Hugh H. Williams and Bonifacio Montoya are members of the State Corporation Commission of New Mexico and these three defendants constitute the State Corporation Commission of New Mexico. The defendant L. B. Gregg is the State Bank Examiner of New [fol. 3] Mexico. This is a suit of a civil nature in equity arising under the Constitution of the United States and the matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars ($3,000).

2. Your orator is a corporation with full corporate power to do a general bonding and surety business and to become surety on the bonds of employees of individuals, co-partnerships or corporations as well as public officers and generally to execute as principal or surety bonds guaranteeing the performance of contracts or sundry other undertakings, obligations or duties of individuals, co-partnerships or corporations. As such a corporation your orator is and for many years has been engaged in transacting its said business in various states throughout the United States, including the State of New Mexico. Your orator is, within the meaning of the laws of New Mexico relating to insurance, a foreign insurance company authorized to do business in New Mexico.

3. Section 1 of Article XI of the Constitution of the State of New Mexico provides:

"A permanent commission to consist of three members is hereby created, which shall be known as the 'State Corporation Commission.'"

Section 6 of the same Article provides, among other things:

"Subject to the provisions of this constitution, and of such requirements, rules and regulations as may be prescribed by law, the state corporation commission shall be the department of government through which shall be issued all charters for domestic corporation and amendments or extensions thereof, and all licenses to foreign [fol. 4] corporations to do business in this state; and through which shall be carried out all the provisions of this constitution relating to corporations and the laws made in pursuance thereof * * *. All charters, papers and documents relating to corporations on file in the office of the secretary of the territory, the commissioner of insurance and all other territorial offices, shall be transferred to the office of the commission."

Section 2807 of the New Mexico Code of 1915 is a codification of part of an act passed some years prior to the adoption of the Constitution of the State of New Mexico. Section 2807 provides, among other things:

"It shall be the duty of the superintendent of insurance * * * to issue certificates of authority to transact insurance business to any insurance companies which have fully complied with the laws of this State, and to issue such other certificates as required by law in the organization of insurance companies and the transaction of the business of insurance and generally to do and perform with justice and impartiality all such duties as are or may be imposed on him by the laws in relation to the business of insurance in this state; * * *."

Section 2814 of the New Mexico Code of 1915 provides, among other things:

"No company shall transact in this State any insurance business unless it shall procure from the Superintendent of Insurance a certifi- [fol. 5] cate stating that the requirements of the laws of this State have been complied with, and authorizing it to do business. Said certificate shall expire on the last day of February in each year, and must be renewed annually. Every such company shall be required to procure annually for the use of its agents and solicitors copies of such certificate of authority, and any person soliciting business or any company authorized to transact business in this State without first procuring a certificate from the superintendent of insurance, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of one hundred dollars for each and every offence. * * *"

Section 2815 of the New Mexico Code of 1915 provides, among other things, that an insurance company not incorporated or organized under the law of New Mexico shall, before permission is given to transact business and before the renewal of its certificate of authority, file a certificate signed by its president or chief officer to the effect that all the provisions of Chapter LVIII (relating to insurance) of said Code are accepted by it as a part of the conditions of its right and authority to transact business in New Mexico.

Section 2861 of the New Mexico Code of 1915 provides:

"It shall be the duty of the Superintendent of Insurance to revoke the authority to do business in this State of any corporation, firm or association, violating or failing to comply with any of the provisions of this chapter, or any of whose agents fail to comply with or violate any of the provisions of this chapter. And no such corporation, firm or association shall be authorized to write any insurance in this state for the period of one year after such revocation."

[fol. 6] Each of the sections hereinbefore mentioned and also Section 2820 hereinafter mentioned of the New Mexico Code of 1915 are part of Chapter LVIII thereof entitled "Insurance."

Section 22 of Chapter 56 of the New Mexico Laws of 1917 provides:

"The State Corporation Commission shall have control and supervision of the State Bank Examiner and the records and files of his office."

Section 2 of Chapter 47 of the New Mexico Laws of 1921 provides:

"That all the powers and duties prescribed by law and vesting in or resting upon the Insurance Department of the State of New Mexico and the Superintendent thereof shall be forthwith vested in and performed by the State Bank Examiner of the State of New Mexico."

4. Your orator has for many years been transacting and is now transacting business in the State of New Mexico and in the conduct of such business has at all times complied with the laws of the State of New Mexico and has from time to time procured and had renewed annually, pursuant to the laws of the State of New Mexico and especially to Sections 2814 and 2815 of the New Mexico Code of 1915, a certificate authorizing your orator to do business in the State of New Mexico. Under the laws of New Mexico and especially under said Section 2814 your orator's certificate now in force will expire on the last day of February in the year 1924. Your orator, however, avers that under the laws of New Mexico and upon compliance with the provisions thereof your orator is entitled to continue to do business in New Mexico and to procure another annual renewal of its certificate from and after the last day of February, 1924. The present value of the business done by your orator in

the State of New Mexico or of the right to continue to do business [fol. 7] in the State of New Mexico in compliance with the laws of New Mexico exceeds the sum of five thousand dollars ($5,000).

3. Section 2820 of the New Mexico Code of 1915, as amended by Chapter 195 of the New Mexico Laws of 1921, provides:

"It shall be unlawful for any foreign insurance company to make, write, place or cause to be made, written or placed in this State, any insurance policy or contract of any kind to provide against any contingency which may be insured or guaranteed against, unless the same shall be made, written or placed through its duly and regularly appointed and authorized agent or agents, resident of this State. It shall be unlawful for any insurance company authorized to do business in New Mexico, its representative, manager, general agent, special agent, local agent, broker or solicitor, to pay or promise to pay, either directly or indirectly any fee, brokerage or other emolument of any nature to any person, firm or corporation not a resident of the State of New Mexico, for the obtaining, placing or writing of any policy or policies of insurance covering risks in New Mexico. Any insurance company violating this Section shall have its certificate of authority to do business in this State suspended for not less than one year, and such suspension shall be removed and the said certificate of authority renewed only upon a written pledge from the directors or executive body in authority over the officers of such company that this Section will be fully and faithfully observed."

[fol. 8] 6. Since Section 2820 was enacted your orator has not made, written, placed or caused to be made, written or placed in the State of New Mexico any insurance policy or contract of any kind to provide against any contingency which may be insured or guaranteed against unless the same has been made, written or placed through your orator's duly and regularly appointed and authorized agent or agents, residents of the State of New Mexico. In many cases, however, in the course of the conduct of your orator's business services of value have been and are rendered to your orator by its agents or officers or employees in other states in connection with the procurement of business made, written and placed as aforesaid in New Mexico. Your orator's agents or branch offices in states other than New Mexico frequently have received and do receive applications from residents of such states other than New Mexico for bonds guaranteeing the fidelity of New Mexico employees of such applicants. In such cases your orator's agents or branch offices in states other than New Mexico transmit such business to New Mexico and the bonds are executed by the New Mexico employees of the applicants and are made, written and placed by your orator in New Mexico through your orator's agents, residents of New Mexico. In such cases, however, the services rendered your orator by its agents or branch offices in states other than New Mexico are of value to your orator and necessarily must be, have been and are paid for. In the

case of branch offices such services are part of the regular services for which your orator's branch office officers and employees receive regular salaries or compensation. In the case of agencies such services are paid for by commissions on such basis as is agreed upon, outside of New Mexico, between your orator and its agents.

7. The defendant L. B. Gregg, as State Bank Examiner of New Mexico, has asserted and still asserts that the payments made as aforesaid by your orator to its agents in states other than New Mexico for the services rendered in connection with the procurement of business made, written and placed in New Mexico under the circum-
[fol. 9] stances set forth in the aforegoing paragraph 6 of this bill of complaint constitute a violation by your orator of the following provision of Section 2820 (as amended) of the New Mexico Code of 1915.

"It shall be unlawful for any insurance company authorized to do business in New Mexico, its representative, manager, general agent, special agent, local agent, broker or solicitor, to pay or promise to pay, either directly or indirectly, any fee, brokerage or other emolument of any nature to any person, firm or corporation not a resident of the State of New Mexico, for the obtaining, placing or writing of any policy or policies of insurance covering risks in New Mexico."

Said defendant L. B. Gregg, as State Bank Examiner of New Mexico, also has asserted and still asserts that said Section 2820 (as amended), as so construed by him and as so applied to said payments by your orator, is valid legislation and that, under the laws of New Mexico and especially under the provisions of said Section 2820 (as amended) and other provisions of the constitution and laws of New Mexico hereinbefore in this bill of complaint set forth, it is the right and duty of said defendant to request the other defendants as the State Corporation Commission of New Mexico to suspend or undertake or attempt to suspend, or to cooperate with said other defendants as the State Corporation Commission of New Mexico in suspending or undertaking or attempting to suspend, for not less than one year your orator's certificate of authority to do business in the State of New Mexico. Said defendant L. B. Gregg, as State Bank Examiner of New Mexico, accordingly on or about the 14th day of November, 1923, requested the other defendants, as the State Corporation Commission of New Mexico, to suspend the right of your orator to transact business in New Mexico for the period of one year from the 19th day of November, 1923, which request was
[fol. 10] afterwards amended by said defendant so that the requested period of suspension should begin on the 8th day of January, 1924.

8. When said defendant L. B. Gregg, as State Bank Examiner, so made and so amended said request to the other defendants, as the State Corporation Commission of New Mexico, your orator was

given an opportunity to appear before said other defendants, as the State Corporation Commission of New Mexico, and show cause why the said request should not be granted. Availing itself of such opportunity your orator showed, as cause why said request should not be granted, that your orator is advised that by virtue of the Fourteenth Amendment of the Constitution of the United States the State of New Mexico has no right whatsoever to control, regulate or prohibit your orator's contracts, agreements or arrangements, made outside of New Mexico, concerning compensation of its officers, employees or agents who do not reside in New Mexico for services rendered wholly outside of the State of New Mexico and that, if Section 2820 of the New Mexico Code of 1915 (as amended) be construed as prohibiting or declaring unlawful the payment by your orator of compensation to its officers, employees and agents outside of New Mexico under the circumstances and for the services mentioned, then this Section, as so construed and applied, is contrary to the Fourteenth Amendment of the Constitution of the United States and is therefore null and void.

9. Notwithstanding the cause so shown by your orator the defendants J. M. Luna, as Chairman, and Hugh H. Williams and Bonifacio Montoya, as members, of the State Corporation Commission of New Mexico, constituting the State Corporation Commission of New Mexico, have determined and intend to grant the request of the defendant L. B. Gregg, as State Bank Examiner of New Mexico, and have determined and intend to suspend or to undertake or at-[fol. 11] tempt to suspend for the period of one year from the 8th day of January, 1924, the right and the certificate of authority of your orator to do business in the State of New Mexico. The sole reason of said defendants for the action so proposed to be taken by them is the fact that your orator made the payments, to its agents in states other than in New Mexico, hereinbefore in paragraph 6 of this bill of complaint fully mentioned.

10. Your orator therefore avers that, unless restrained by this Honorable Court, the defendants, as the State Corporation Commission of New Mexico and as the State Bank Examiner of New Mexico respectively, will on the 8th day of January, 1924, or shortly thereafter, suspend for the period of one year your orator's certificate of authority to do business in the State of New Mexico and will therefore at the end of February, in the year 1924, refuse to renew your orator's present certificate of authority, and will thereby undertake and attempt, and assert the right, to suspend the right of your orator to do business in the State of New Mexico during said period of suspension, and even after the expiration of said period of suspension, will continue to deny the right of your orator to do business and will undertake and attempt to prevent your orator from doing business in the State of New Mexico, except in compliance with the provisions of said Section 2820 (as amended) as so construed and applied by said defendants. Thereby, unless said defendants are restrained by this Honorable Court, your orator's valuable right to do business in the State of New Mexico and your orator's valuable

business in said State will be wholly destroyed, since your orator could not after such suspension or attempted suspension of its certificate of authority to do business in New Mexico continue to do business in New Mexico in view of the provisions of Section 2814 of the New Mexico Code of 1915, whereby not only your orator but also any person soliciting business for it in the State of New Mexico would become liable to a fine of one hundred dollars for each and every offense of so transacting or soliciting business in New Mexico in case [fol. 12] such attempted suspension of your orator's certificate of authority should ultimately be held lawful and valid.

11. Your orator avers that by virtue of the Fourteenth Amendment of the Constitution of the United States the State of New Mexico has no right whatsoever to control, regulate or prohibit your orator's contracts, agreements or arrangements, made outside of New Mexico, concerning compensation of its officers, employees or agents who do not reside in New Mexico for services rendered wholly outside of the State of New Mexico and that Section 2820 (as amended) of the New Mexico Code of 1915, if construed and applied (as the defendants construe and apply it) as prohibiting or declaring unlawful the payment by your orator of compensation to its officers, employees and agents outside of New Mexico under the circumstances and for the services hereinbefore set forth, would deprive your orator of its liberty and property without due process of law and would deny to your orator the equal protection of the law and is therefore null and void.

12. In view of the fact that the defendants intend on the 8th day of January, 1924, or shortly thereafter, to suspend your orator's certificate of authority to do business in the State of New Mexico, immediate and irreparable loss and damage to your orator would result from such suspension before this matter can be heard on application for a preliminary injunction after notice to the defendants.

To this end, therefore:

1. That the aforesaid Section 2820 of the New Mexico Code of 1915, as amended by Chapter 195 of the Laws of 1921, approved March 14, 1921, in so far as it prohibits or declares unlawful the payment by your orator of compensation to its officers, employees or agents not residents of the State of New Mexico for services rendered wholly outside of the State of New Mexico in connection with the procurement of business made, written and placed by your orator [fol. 13] in the State of New Mexico, and in so far as it undertakes to empower and authorize the defendants or any of them to suspend your orator's certificate of authority to do business in the State of New Mexico because of such payments to such non-residents of the State of New Mexico, be declared unconstitutional and void.

2. That the defendants, J. M. Luna, chairman, and Hugh H. Williams and Bonifacio Montoya, members, of the State Corporation Commission of New Mexico, constituting the State Corporation Commission of New Mexico, and L. B. Gregg, State Bank Examiner of

New Mexico, and their respective successors in office, deputies, clerks and attorneys and all persons acting under their authority, may be perpetually, and also preliminarily pending this suit, restrained and enjoined from suspending or attempting to suspend your orator's certificate of authority to do business in the State of New Mexico or from taking any further steps to that end, and from refusing to renew your orator's said certificate at the expiration thereof at the end of February in the year 1924 upon compliance by your orator with all the requirements of the laws of the State of New Mexico relating to the renewal of such certificates, except the provisions of Section 2820 (as amended) of the New Mexico Code of 1915 in so far as they are, as your orator herein avers, unconstitutional and void and except also the provisions of Section 2815 of said Code in so far as said provisions may purport to require, as a part of the conditions of your orator's right and authority to transact business in the State of New Mexico, the acceptance of said unconstitutional and void provisions of said Section 2820 (as amended).

3. And that your orator may have such other and further relief in the premises as its case may require.

May it please your honor to grant unto your orator the writ of subpœna directed to the defendants and each of them commanding them to be and appear in this Honorable Court on some certain day [fol. 14] to be named therein and to answer the premises and to abide by and perform such order or decree as this Honorable Court may make in the premises.

And as in duty bound your orator will ever pray.

C. J. Roberts, Solicitor for Plaintiff, Santa Fe, New Mexico.

Jurat showing the foregoing was duly sworn to by C. J. Roberts omitted in printing.

[fol. 15] IN UNITED STATES DISTRICT COURT

MOTION FOR PRELIMINARY INJUNCTION—Filed January 9, 1924

Now comes the plaintiff in the above entitled case, Fidelity and Deposit Company of Maryland, by C. J. Roberts, its solicitor, and moves this Honorable Court to grant a writ of injunction against the defendants and each of them and their respective successors in office, deputies, clerks, attorneys and all persons acting under their authority, pending this suit and until the further order of the Court, conformably to the prayer of the bill in said case filed.

C. J. Roberts, Solicitor for Plaintiff.

IN UNITED STATES DISTRICT COURT

STIPULATION WAIVING SERVICE OF NOTICE OF APPLICATION FOR PRELIMINARY INJUNCTION—Filed January 9, 1924

It is stipulated and agreed by and between the plaintiff herein, appearing by C. J. Roberts, its attorney, and the defendants herein, appearing by Milton J. Helmick, Attorney General of the State of New Mexico, that service of formal notice of application for preliminary injunction, as prayed for in the bill of complaint herein, upon said defendants and the Honorable James F. Hinkle, Governor, and the Honorable Milton J. Helmick, Attorney General, of New Mexico, is hereby waived, the Attorney General of the State of New Mexico having entered his appearance for all of said parties in accordance with stipulation this day signed and filed.

C. J. Roberts, Attorney for Plaintiff. Milton J. Helmick, Attorney General of the State of New Mexico, for said Defendants and the Governor.

Approved: Colin Neblett, Judge.

[fol. 16] IN UNITED STATES DISTRICT COURT

STIPULATION ENTERING APPEARANCE FOR DEFENDANTS AND WAIVING THE ISSUANCE AND SERVICE OF PROCESS AND FOR CONTINUANCE OF PRELIMINARY INJUNCTION UNTIL FINAL HEARING AND APPROVAL BY THE COURT OF THE SAME—Filed January 9, 1924

It is hereby stipulated and agreed between the parties hereto, plaintiff appearing by C. J. Roberts, its attorney, and the defendants appearing by Milton J. Helmick, Attorney General, as follows:

1. The defendants waive the issuance and service of process herein, and enter an appearance, reserving, however, any right to object to the jurisdiction of the Court over the persons and subject matter upon any ground other than that no service of process *have* been entered.

2. It is further stipulated and agreed that the preliminary restraining order issued this day by the Court shall continue in full force and effect until the final hearing herein.

3. It is further stipulated and agreed that the hearing of the application for the preliminary injunction before the Honorable Robert L. Lewis, United States Circuit Judge for the Eighth Circuit, and the Honorable Orie L. Phillips, United States District Judge of New Mexico, and His Honor Judge Colin Neblett, is hereby waived, and said restraining order is continued until said cause is heard upon its merits.

C. J. Roberts, Attorney for Plaintiff. Milton J. Helmick, Attorney for Defendants.

Approved this 9th day of January, 1924. Colin Neblett, United States District Judge.

[fol. 17] IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Filed January 9, 1924

Upon reading the bill of complaint and affidavit herein, it appearing from the facts shown by the verified bill that before notice can be served and a hearing had on the plaintiff's application for a preliminary injunction herein or on the plaintiff's application for a restraining order immediate and irreparable injury, loss and damage will result to the plaintiff, to wit, that on the 8th day of January, 1924, or shortly thereafter, the plaintiff's certificate of authority to do business in the State of New Mexico will be suspended, now, therefore, it is adjudged and ordered that the defendants, J. M. Luna, Chairman, and Hugh H. Williams and Bonifacio Montoya, members of the State Corporation Commission, constituting the State Corporation Commission of New Mexico, and L. B. Gregg, State Bank Examiner, and each of them and their respective successors in office, deputies, clerks, and attorneys and all persons acting under their authority be and the and each of them hereby are restrained and enjoined from suspending or attempting to suspend the plaintiff's certificate of authority to do business in the State of New Mexico or from taking any further steps to that end. This restraining order shall become effective upon the giving of security by the plaintiff by filing a bond in the sum of Five Thousand dollars conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby. This restraining order shall remain in force only until the hearing and determination of the application for a preliminary injunction herein and shall expire within ten days after entry unless within said time it is extended for a like period for good cause shown. The matter of the issuance of a preliminary injunction herein is hereby set down for hearing on the 19th day of Janu-[fols. 18 & 19] ary, 1924, at 10 o'clock A. M.

It is further ordered that a copy of this order be served upon the defendants and also upon the Governor of the State of New Mexico and the Attorney-General of the State of New Mexico.

And I hereby designate the Honorable Robert L. Lewis, United States Circuit Judge for the Eighth Circuit, and the Honorable Orie L. Phillips, United States Dist. Judge, Judge for New Mexico to sit with me at the hearing of the application for the preliminary injunction.

Issued and entered at 10 o'clock A. M., this 9th day of January, 1924.

Colin Neblett, United States District Judge.

Approved.

BOND ON INJUNCTION FOR $5,000—Approved and filed January 9, 1924; omitted in printing

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[fol. 20] IN UNITED STATES DISTRICT COURT

ANSWER—Filed March 10, 1924

Come now defendants in the above entitled cause and present this their answer to the bill of plaintiffs.

Defendants first move the court to dismiss the bill filed in this cause because said bill does not state any matter of equity entitling plaintiff to relief prayed for nor are the facts stated in the bill sufficient to entitle plaintiff to any relief whatever against these defendants.

Defendants move the court to dismiss the bill on the further ground that it affirmatively appears on the face of the said bill that this court is wholly without jurisdiction in the premises.

[fol. 21] Defendants move the court to dismiss the bill filed in this cause for the further reason that it appears from the face of the bill that the same does not question the validity or constitutionality of any law of the State of New Mexico but, on the contrary, the said bill purports and pretends to question a mere construction of certain statutes of the State of New Mexico and the administrative acts of officers of the State of New Mexico.

Defendants move the court to dismiss the bill filed in this cause because the statutes of the State of New Mexico which the said bill purports and pretends to attack are statutes of a familiar character enacted by many states of the Union and are obviously fair and valid legislation under the police power of the State of New Mexico, and not in conflict with any prohibition of the Constitution of the United States or State of New Mexico.

And defendants, not waiving any of the foregoing motions and objections and not waiving any of the manifest insufficiencies of the bill, for further answer:

I

Admit the contents of paragraph 1 excepting the last sentence thereof and as to the allegations contained in the last sentence, these defendants say that they are without information sufficient to form a belief as to whether or not the matter in controversy exceeds exclusive interest, in cost the sum of $300.00, and therefore defendants on information and belief deny the last sentence of the said paragraph.

II

Admit the contents of paragraph 2 of the bill.

III

Admit the contents of paragraph 3 of said bill, but show in this connection that there are various other and further provisions of

the Constitution of the State of New Mexico and statutes of the State of New Mexico relating to the official duties of these defendants and [fol. 22] to the regulation of corporations of the same class as plaintiff, which said constitutional provisions and statutes are too lengthy to be set out in full and consequently these defendants pray leave of the court to submit and prove such of these statutes as may become pertinent on the trial of this cause.

IV

Admit that plaintiff has been transacting business in New Mexico for many years, but deny that it has at all times complied with the laws of the State of New Mexico. Deny that plaintiff is entitled to continue to do business in New Mexico and to procure a renewal of its certificate from and after the first day of Feb. 1924. State that they have no information sufficient to form a belief as to the present value of business done by plaintiff in the State of New Mexico or of the right to continue business in the State of New Mexico or whether said right exceeds the sum of $5,000.00 and consequently defendants deny such allegations on information and belief.

V

Admit the contents of paragraph 5 of the bill.

VI

Deny the first sentence of paragraph 6 of the bill. Admit the remainder of the contents of paragraph 6 except defendants deny that the service mentioned by agents and branch offices other than New Mexico necessarily must be paid for.

VII

Admit the contents of paragraph 7 except that defendants deny that the defendant Gregg has at any time placed any peculiar or individual construction upon said statute in performing the acts mentioned in said paragraph but, on the contrary, defendants show that the plain, ordinary and fair construction of the said statute applied to the admitted acts of the plaintiff, necessarily establishes that plaintiff has been guilty of a violation of the said Act.

[fol. 23] VIII

Admit the first sentence of paragraph 8, but deny all the allegations and conclusions contained in the remainder of the paragraph, and as to such conclusions, these defendants say that the same should be stricken.

IX

Admit the contents of paragraph 9.

X

Admit the contents of paragraph 10 except that these defendants deny that they or any of them make or insist upon any individual or peculiar construction and application of Sec. 2820 but, on the contrary, these defendants show that they have not and will not make any individual or peculiar construction of the said section, but only the ordinary, obvious and fair construction, which said section necessarily calls for.

XI

Deny all the contents of paragraph 11 of the bill.

And these defendants further answering, show and allege:

I

That the said statutes of the State of New Mexico cited, quoted and plead by plaintiff are each and all of them familiar laws enacted in substantially like form in many of the states of the United States and that such statutes are obviously fair and valid legislation enacted in pursuance of the police power of the State of New Mexico and not in contravention of any provision of the Constitution of the United States or State of New Mexico.

II

That these defendants or any of them have not placed any individual, strained or unusual construction upon the fair, plain and obvious meaning of the words of the said statutes, but plaintiff, by its bill, seeks to attack the administrative acts of these defendants merely, and not the validity of the said statutes, but defend- [fol. 24] ants show that the acts of these defendants are necessarily in full conformity with the said statutes and that therefore plaintiff having specifically neglected to attack the validity of the statutes has attacked nothing, and hence has asserted no right to any relief which this court may grant.

III

That the admitted acts of plaintiff disclosed on the face of its bill constitute clear violations of the provisions of the said statutes of the State of New Mexico and justify the official acts of these defendants in suspending plaintiff as alleged in the bill.

IV

That these defendants, as officials of the State of New Mexico, and the State of New Mexico, have been damaged by the issuance of the writ of injunction herein at the instance of the plaintiff in the sum of $500.00.

Wherefore, these defendants pray judgment against plaintiff and its bondsmen in the sum of $500.00; that the bill of plaintiff may be dismissed; that the injunction heretofore issued may be quashed

and that defendants go forth without day and have their costs herein expended.

Milton J. Helmick, Attorney General of New Mexico, Attorney for Defendants, Santa Fe, New Mexico.

Jurat showing the foregoing was duly sworn to by Bonifacio Montoya omitted in printing.

[fol. 25] IN UNITED STATES DISTRICT COURT

REPLY—Filed March 10, 1924

Comes now the plaintiff in the above entitled cause and for reply to paragraph IV of said defendants' further answer, denies that said defendants, or the State of New Mexico, or any of them have been damaged by the issuance of the writ of injunction herein in the sum of $500.00, or in any sum.

C. J. Roberts, Attorney for Plaintiff, Santa Fe, New Mexico.

IN UNITED STATES DISTRICT COURT

STIPULATION FOR RENEWAL OF CERTIFICATE OF PLAINTIFF TO DO BUSINESS IN NEW MEXICO PENDING FINAL DETERMINATION OF THIS CASE—Filed February 27, 1924

Whereas, the plaintiff's certificate of authority to do business in the State of New Mexico expires on or about the 28th day of February, 1924, and if said plaintiff continues to do business in the State of New Mexico pending the determination of this case, its said certificate of authority will be required to be renewed by the State Corporation Commission, and,

Whereas, its right to a renewal is dependent upon the final determination of the issues in this cause in favor of said plaintiff, and,

Whereas, said plaintiff in its bill has asked the court to enjoin and restrain said Corporation Commission from refusing to renew plaintiff's certificate of authority to do business in the State of New Mexico,

It is therefore, stipulated and agreed between the parties hereto, the plaintiff being represented by C. J. Roberts, its attorney, and [fol. 26] the defendants being represented by Milton J. Helmick, Attorney General of the State of New Mexico, as follows:

1. The State Corporation Commission shall renew the certificate of authority of the plaintiff to do business in the State of New Mexico from month to month, pending the final determination of this case.

2. Upon final determination of this case, if the defendant shall prevail, the right of the plaintiff to do business under said certificate shall terminate.

3. This stipulation is not intended to and shall not be a waiver of the rights of either party hereto, nor shall it operate in prejudice of the rights of either party.

Dated and signed at Santa Fe, New Mexico, this 26th day of February, 1924.

C. J. Roberts, Attorney for Plaintiff, Milton J. Helmick, Attorney General, Attorney for Defendants.

IN UNITED STATES DISTRICT COURT

FINAL DECREE—Filed April 30, 1924

This cause coming on for final hearing on bill, answer, evidence and stipulation and agreements of counsel in open court, counsel for the respective parties were heard and the matter was duly considered, and the Court finding that the value of the business done by the plaintiff in New Mexico and of the right to continue to do business therein exceeds the sum of five thousand dollars and that the matter in controversy exceeds, exclusive of interest and cost, the sum of three thousand dollars, and that the defendants intend to suspend the right and the certificate of authority of the plaintiff to do business in New Mexico for the sole reason that the plaintiff has made payments to its agents in states other than New Mexico in connection with the procurement of business made, written and placed by the plaintiff in New Mexico, but the Court being of the [fol. 27] opinion that such payments are, by virtue of Section 2820 of the New Mexico Code of 1915, as amended by Chapter 195 of the New Mexico Laws of 1921, unlawful, and that said Section 2820 in so far as it applies to and makes unlawful such payments and authorizes the suspension of the plaintiff's certificate of authority to do business in New Mexico, because of any violation of said section by such payments is valid, constitutional legislation of the State of New Mexico binding on the plaintiff,

Now, therefore, it is by the Court this 30th day of April, 1924, ordered, adjudged and decreed that the bill of complaint herein be and the same hereby is dismissed with costs to defendants and the temporary restraining order entered herein on the 9th day of January, 1924, and continued in full force and effect until the final hearing herein by stipulation and agreement between the parties herein approved by the Court on the 9th day of January, 1924, be and it hereby is dissolved.

Colin Neblett, United States District Judge.

In United States District Court

Assignment of Errors and Prayer for Reversal—Filed April 30, 1924

Now comes Fidelity and Deposit Company of Maryland, a body corporate, plaintiff and appellant, and for its assignment of errors shows:

1. That the Court erred in not holding that Section 2820 of the New Mexico Code of 1915, as amended by Chapter 195 of the Laws of 1921, approved March 14, 1921, in so far as it prohibits or declares unlawful the payment by the plaintiff of compensation to its officers, employees or agents not residents of the State of New Mexico [fol. 28] for services rendered wholly outside of the State of New Mexico in connection with the procurement of business made, written and placed by the plaintiff in the State of New Mexico and in so far as it undertakes to empower and authorize the defendants or any of them to suspend the plaintiff's certificate of authority to do business in the State of New Mexico because of such payments to such non-residents of the State of New Mexico, would deprive the plaintiff of its liberty and property without due process of law and would deny to the plaintiff the equal protection of the laws and is therefore contrary to the Fourteenth Amendment of the Constitution of the United States and is therefore null and void.

2. That the Court erred in holding that the aforesaid Section 2820, amended as aforesaid, in so far as it applies to and makes unlawful payments by the plaintiff to its agents in states other than New Mexico, not residents of New Mexico, for services rendered wholly outside of New Mexico in connection with the procurement of business made, written and placed by the plaintiff in New Mexico and authorizes the suspension of the plaintiff's certificate of authority to do business in New Mexico because of any violation of said Section by such payments, is valid, constitutional legislation of the State of New Mexico binding on the plaintiff.

3. That the court erred in not perpetually restraining and enjoining the defendants and their respective successors in office, deputies, clerks, and attorneys and all persons acting under their authority from suspending or attempting to suspend the plaintiff's certificate of authority to do business in the State of New Mexico or from taking any further steps to that end and from refusing to renew the plaintiff's said certificate at the expiration thereof upon compliance by the plaintiff with all the requirements of the laws of the State of New Mexico relating to the renewal of such certificates, except the provisions of the aforesaid Section 2820, amended as aforesaid, in so far [fol. 29] as they are unconstitutional and void, and except also the provisions of Section 2815 of the New Mexico Code of 1915 in so far as said provisions may purport to require as part of the conditions of the plaintiff's right and authority to transact business in the State of New Mexico the acceptance of said unconstitutional and void provisions of said Section 2820 as so amended.

4. That the Court erred in dismissing the bill of complaint.

Wherefore the said plaintiff and appellant prays that the final decree made and entered herein on April — 1924, be reversed and that the Court may be directed to enter a decree in accordance with the prayers of the bill.

C. J. Roberts, Solicitor for Fidelity and Deposit Company of Maryland, Plaintiff and Appellant.

In United States District Court

Petition for Appeal and Allowance of Appeal—Filed April, 30, 1924

The above named plaintiff, Fidelity and Deposit Company of Maryland, a body corporate, conceiving itself aggrieved by the final decree made and entered on April 30, 1924, in the above entitled cause, doth hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and the plaintiff prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated at Santa Fe, New Mexico, April 30, 1924.

C. J. Roberts, Solicitor for Fidelity and Deposit Company of Maryland, Plaintiff and Appellant.

And now, to wit, on April 30, 1924, it is ordered that the appeal [fols. 30–32] be allowed as prayed upon the filing of a bond in the sum of five hundred dollars ($500.00) with good and sufficient security, said appeal to operate as a supersedeas of the final decree of April 30, 1924, and United States Fidelity and Guaranty Company is accepted as surety on said bond and said bond is now approved.

Colin Neblett, United States District Judge.

Bond on Appeal for $500—Approved and filed April 30, 1924; omitted in printing

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[fol. 33] , In United States District Court

Order Restoring and Modifying Temporary Restraining omitted in printing

The plaintiff in open court this 30th day of April, 1924, having prayed an appeal to the Supreme Court of the United States from the final decree entered herein on the 30th day of April, 1924, dismissing the bill of complaint and dissolving the temporary restraining order entered herein on the 9th day of January, 1924, and con-

tinued in full force and effect until the final hearing herein by stipulation and agreement between the parties, approved by the Court on the 9th day of January, 1924, and having presented and filed its assignment of errors and prayer for reversal and its bond in the sum of five hundred dollars ($500) with good and sufficient security, approved by the Court, and said appeal having this day been allowed by the District Judge who decided the cause and entered said final decree, it is this 30th day of April, 1924, ordered that the temporary restraining order entered herein on the 9th day of January, 1924, continued in full force and effect until the final hearing herein by stipulation and argreement between the parties approved by the Court on the 9th day of January, 1924, and dissolved by the final decree entered herein on the 30th day of April, 1924, be and said temporary restraining order hereby is restored and modified, as hereinafter set forth, during the pendency of the appeal from said final decree to the Supreme Court of the United States upon the terms hereinafter set forth, and it is adjudged and ordered that, during the pendency of said appeal, the defendants, J. M. Luna, Chairman, and Hugh H. Williams and Bonifacio Montoya, members, constituting the State Corporation Commission of New Mexico, and L. B. Gregg, State Bank Examiner of New Mexico, and each of them and their respective successors in office, deputies, clerks and attorneys [fol. 34] and all persons acting under their authority, be and they and each of them hereby are restrained and enjoined from suspending or attempting to suspend the plaintiff's certificate of authority to do business in the State of New Mexico or from any further steps to that end and from refusing to renew from time to time the plaintiff's said certificate at the expiration thereof upon compliance by the plaintiff with all the requirements of the laws of the State of New Mexico relating to the renewal of such certificates, except the provisions of Section 2820 (as amended) of the New Mexico Code of 1915 in so far as they prohibit or declare unlawful the payment by the plaintiff of compensation to its officers, employees or agents not residents of the State of New Mexico for services rendered wholly outside of the State of New Mexico in connection with the procurement of business made, written and placed by the plaintiff in the State of New Mexico and except also the provisions of Section 2815 of said Code in so far as said provisions may purport to require, as a part of the conditions of the plaintiff's right and authority to transact business in the State of New Mexico, the acceptance of the aforesaid provisions of said Section 2820 (as amended). This order shall become effective upon the giving of security by the plaintiff by filing a bond in the sum of five thousand dollars ($5,000) conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Colin Neblett, United States District Judge.

[fols. 35-37] BOND REQUIRED BY ORDER RESTRAINING AND MODIFYING TEMPORARY RESTRAINING ORDER FOR $5,000—Filed April 30, 1924; omitted in printing.

[fol. 38] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO EVIDENCE—Filed May 17, 1924

It is hereby stipulated and agreed by and between the parties hereto, the plaintiff by C. J. Roberts, its attorney, and the defendants by Milton J. Helmick, Attorney-General, their attorney, that the evidence in this case for the purpose of this appeal is as follows, to-wit:

IN UNITED STATES DISTRICT COURT

COLLOQUY BETWEEN COURT AND COUNSEL

C. J. Roberts: In the pleadings in this case there is a denial of the fact that we have written or placed in the State of New Mexico, insurance upon which premiums have been paid to the Company of more than Five Thousand Dollars ($5,000).

It is stipulated and agreed between the Attorney General and myself that the affidavit of Charles R. Miller, Vice President of the Petitioner, shall be received as evidence as to the revenue derived from the business done in New Mexico for the year 1923, and I now offer this affidavit in evidence, and ask that it be marked 'Petitioner's Exhibit A,' which shows the total revenue derived from business in New Mexico for the year 1923 of $14,844.13.

M. J. Helmick: There is no objection.

The Court: It will be received.

C. J. Roberts: There is another denial in the answer, the first sentence of Paragraph Six of Petitioner's Bill of Complaint, and it is stipulated and agreed between the parties hereto that no bond or undertaking has been written or placed in the State of New Mexico by the Petitioner Company unless the same purports on its face to have been made, written or placed through Petitioner's duly and regularly appointed and authorized agent or agents, residents of this State.

Petitioner now offers in evidence a certified copy of the record and [fol. 39] proceedings had before the State Corporation Commission of the State of New Mexico, in the Matter of the suspension of the Fidelity and Deposit Company of Maryland, which proceedings were had on the 8th day of January, 1924, and ask to have the same marked as Petitioner's Exhibit 'B.'

M. J. Helmick: No objection.

The Court: It will be admitted.

C. J. Roberts: Petitioner rests.

M. J. Helmick: We offer in evidence the Acceptance of Laws, of the State of New Mexico, by Petitioner, dated January 28, 1911, and January 26, 1924, filed with the Insurance Department, Bank Examiner's office, of the State of New Mexico, the same being the original records from his office.

C. J. Roberts: Petitioner objects to the introduction of this in evidence, because the Surety Company was required to sign such a

statement by compulsion in order to be authorized to continue its business in the State of New Mexico, and if the statute be unconstitutional as construed and applied by the officers executing the same, petitioner would in no wise be bound by the written acceptance.

The Court: Objection overruled. It will be admitted.

C. J. Roberts: Exception to the ruling of the Court.

M. J. Helmick: The defendants having no further evidence to offer rests, and re-affirms and renews the motions and objections in their Answer contained.

C. J. Roberts: Petitioner having by its evidence established that the matter in controversy exceeds, exclusive of interest and costs, the sum of Five Thousand Dollars, by proving that its revenue from business transacted in New Mexico annually exceeds said sum, and [fol. 40] having proved every material allegation in the Bill by the certified copy of the proceedings had before the State Corporation Commission upon which the action of cancellation by said Commission was to be taken, the Petitioner now moves the Court for Judgment in its favor as prayed in its Bill of Complaint.

After argument by counsel the court rendered its decision in this matter, which is embodied in a decree filed of record in this case.

PETITIONER'S EXHIBIT A

N. V. Belles

1034, Equity

STATE OF MARYLAND,
City of Baltimore, ss:

I hereby certify that on this 1st day of March, 1924, before me, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared Charles R. Miller, The Vice-President of the Fidelity and Deposit Company of Maryland, the complainant in the case entitled "Fidelity and Deposit Company of Maryland, a body corporate, vs. J. M. Luna, Chairman, and Hugh H. Williams and Bonifacio Montoya, members, constituting the State Corporation Commission of New Mexico, and L. B. Gregg, State Bank Examiner of New Mexico," in the United States District Court for the District of New Mexico, and made oath in due form of law that the receipts of the Fidelity and Deposit Company Maryland in the State of New Mexico from its general bonding and surety business for the year 1923 were Fourteen Thousand, Eight Hundred, Forty-four Dollars and Thirteen Cents ($14,844.13), and more than half of this business were receipts from business actually developed in the State of New Mexico.

(Sgd.) Chas. R. Miller, the Vice-President Fidelity and Deposit Company of Maryland.

Sworn to this 1st day of March, 1924. (Sgd.) E. Bayley Bates, Notary Public. My commission expires May 5th, 1924. (Seal.)

[fol. 41] STATE OF NEW MEXICO

(Seal State Corporation Commission of New Mexico)

Certificate of Comparison

UNITED STATES OF AMERICA,
State of New Mexico, ss:

It is hereby certified that the annexed is a full, true and complete transcript of the proceedings had before the State Corporation Commission in the matter of the suspension of the Fidelity and Deposit Company of Maryland, with the endorsements thereon, as same appears on file and of record in the office of the State Corporation Commission.

In testimony whereof the State Corporation Commission of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission, to be affixed at the City of Santa Fe, on this 20th day of March A. D. 1924.

(Sgd.) Hugh H. Williams, Chairman.

Attest: (Sgd.) A. J. Morrison, Clerk. (Seal.)

[fol. 42] PETITIONER'S EXHIBIT B

N. V. Belles

BEFORE THE STATE CORPORATION COMMISSION

In the Matter of the Suspension of the Fidelity & Deposit Company of Maryland

1034, Equity

DEPUTY FOR INSURANCE, INSURANCE DEPARTMENT, STATE OF NEW MEXICO, Complainant,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, Defendant

Santa Fe, New Mexico,
January 8, 1924.—10:00 o'clock a. m.

Appearances: Milton J. Helmick, Attorney General, representing the State Insurance Department, Walter B. Wagner, Deputy for Insurance, Hugh H. Williams, Chairman Corporation Commission, Bonifacio Montoya, Commisioner, appearing for Complainant. C. J. Roberts, appearing for defendant.

Proceedings

The Insurance Department of the State of New Mexico has requested that the right of the Fidelity and Deposit Company of Maryland to transact business in the State of New Mexico be suspended for the period of one year from the 19th day of November, 1923, for an alleged violation of the provisions of Chapter 195 of the Session Laws of 1921, and this investigation is called for the purpose of determining what, if any, action shall be taken in the premises.

[fol. 43] Chairman Williams: Who represents the Fidelity and Deposit Company of Maryland?

C. J. Roberts: C. J. Roberts.

Chairman Williams: The Fidelity and Deposit Company of Maryland is cited to appear in response to a letter dated November 14, 1923, which letter reads as follows, to-wit:

"Santa Fe, November 14, 1923.

The State Corporation Commission, Santa Fe, New Mexico.

GENTLEMEN: This Department requests that the right of the Fidelity & Deposit Company of Maryland to transact business in this State, be suspended for the period of one year from the 19th day of November, 1923, for violation of the provisions of Chapter 195 of the Session Laws of 1921.

Your very truly, (Signed) Walter B. Wagner, Deputy for Insurance."

And the Fidelity and Deposit Company of Maryland now appearing in response to such notice, with its returning answer, which is as follows, to-wit:

"Baltimore, Maryland, December 13th, 1923.

State Corporation Commission, Santa Fe, New Mexico.

GENTLEMEN: The State Bank Examiner, through the deputy for insurance, has requested your Commission to suspend the right of the Fidelity and Deposit Company of Maryland to transact business in New Mexico for the period of one year. In order that we might have time in which to appear before you and show cause why that request should not be granted, the request was amended so that the suspension, if any, is to commence on December 20, 1923.

[fol. 44] In response to this request and as cause why the request should not be granted, we respectfully show:

In the case of the particular Hamer contract concerning which correspondence has been had with the office of the State Bank Examiner, we have not paid or promised to pay any fee, brokerage or other emolument to any person not a resident of the State of New Mexico. Nor have we in any case made, written or placed, or caused to be made, written or placed in New Mexico any insurance contract unless the same has been made, written or placed through our agents, residents of New Mexico.

In many cases, however, services of value have been rendered to us by our agents or officers or employees in other states in connection with the procurement of such business made, written and placed in New Mexico. For instance, our agents or branch officers in other states frequently receive applications from residents of such other states for bonds guaranteeing the fidelity of New Mexico employees of such applicants. In such cases our agents or branch offices in other states transmit such business to New Mexico and the bonds are executed by the New Mexico employees of the applicants and are made, written and placed by us in New Mexico through our agents, residents of New Mexico. In such cases, however, the services rendered us by our agents or branch offices in other states are of value to us and necessarily must be and are paid for. In the case of branch offices such services are part of the regular services for which our branch office officers and employees receive regular salaries or compensation. In the case of agencies such services are paid for by commissions on such basis as is agreed upon outside of New Mexico, between our agents and ourselves.

[fol. 45] We are advised that by virtue of the Fourteenth Amendment of the Constitution of the United States the State of New Mexico has no right whatsoever to control, regulate or prohibit our contracts, agreements or arrangements, made outside of New Mexico, concerning compensation of our officers, employees or agents who do not reside in New Mexico for services rendered wholly outside of the State of New Mexico. We are therefore advised that if Section 2820 of the New Mexico Code of 1915 (as amended in 1921) be construed (as the State Bank Examiner construes it) as pro-hibiting or declaring unlawful the payment by us of compensation to our officers, employees and agents outside of New Mexico under the circumstances and for the services mentioned, then this section, as so construed and applied, is contrary to the Fourteenth Amendment of the Constitution of the United States and is therefore null and void.

Very truly yours, Fidelity and Deposit Company of Maryland, per (Signed) Chas. R. Miller, Vice President."

And the State Corporation Commission having now heard the answer of the Company, announces that it will, upon the admissions contained in the answer, in due course, enter an Order suspending the Company, in accordance with the request made by the Deputy for Insurance, of the Insurance Department, State of New Mexico, for the period of one year.

Mr. Williams: No further matters coming up at this time, we will consider the hearing closed.

(Whereupon, at 10:45 A. M. January 8, 1924, the *the* hearing [fol. 46] of the above entitled matter was closed.)

State Corporation Commission of New Mexico, by (Sgd.) Hugh H. Williams, Chairman.

Attest: (Sgd.) A. J. Morrison, Clerk. (Seal.)

DEFENDANT'S EXHIBIT 1

N. V. Belles

Insurance Department. Received Jan. 29, 1924, Santa Fe.

1034, Equity

Acceptance of Laws

STATE OF MARYLAND,
City of Baltimore:

This is to certify that the Fidelity and Deposit Company of Maryland Insurance Company hereby accepts all of the provisions of Chapter LVIII of the Codification of 1915, entitled "An Act to Establish an Insurance Department in the State of New Mexico, and to Regulate Insurance Companies Doing Business Therein" and all Acts amendatory or additional thereto, and acknowledges that the provisions of said Act, amendments and additions constitute a part of the conditions of its right and authority to transact business in the State of New Mexico.

Fidelity and Deposit Company of Maryland, by (Sgd.) Fred S. Axtell, Vice-President.

Date: Jan. 26, 1924.

[fol. 47] DEFENDANT'S EXHIBIT 2

N. V. Belles

1034, Equity

Acceptance of Laws

STATE OF MARYLAND,
City of Baltimore:

This is to certify that the Fidelity and Deposit Company of Maryland hereby accepts all of the provisions of Chapter 5 of the Acts of the Legislative Assembly of the Territory of New Mexico, approved February 9, 1905, entitled "An Act to Establish an Insurance Department in the Territory of New Mexico and to Regulate Insurance Companies doing Business Therein," and acknowledges that the provisions of said Act constitute a part of the conditions of its right and authority to transact business in the Territory of New Mexico.

Fidelity and Deposit Company of Maryland, by (Sgd.) Chas. R. Miller, Vice-President.

Dated Balto., Md., Jany. 28, 1911.
(On back:) Filed Feby. 1, 1911.

Dated and signed at Santa Fe, New Mexico, this 17th day of May, A. D. 1924.

C. J. Roberts, Attorney for Plaintiff. Milton J. Helmick, Attorney for Defendants.

[fol. 48] IN UNITED STATES DISTRICT COURT

JUDGE'S APPROVAL OF STATEMENT OF EVIDENCE

I, Colin Neblett, Judge of the United States District Court for the District of New Mexico, do hereby approve the foregoing as the evidence in this case for the purpose of appeal herein, pursuant to stipulation of counsel.

Dated and signed at Santa Fe, New Mexico, this 17th day of May, A. D. 1924.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed May 1, 1924

The Clerk of this Court is hereby directed to prepare and certify a transcript of the record in the above entitled case for the use of the Supreme Court of the United States, including therein the following:

1. Bill of Complaint.
2. Motion for Preliminary Injunction.
3. Stipulation waiving service of notice of application for preliminary injunction.
4. Stipulation entering appearance for defendants and waiving the issuance and service of process, and for continuance of preliminary injunction until final hearing, and approval by the Court of the same.
5. Temporary restraining order.
6. Injunction bond filed by plaintiffs.
7. Answer.
8. Reply.
9. Stipulation for renewal of certificate of plaintiff to do business [fol. 49] in New Mexico pending final determination of this case.
10. Final Decree.
11. Assignments of error and prayer for reversal.
12. Petition for appeal and allowance of appeal.
13. Appeal Bond.
14. Citation and acceptance of service.
15. Order restraining and modifying temporary restraining order pending appeal.
16. Bond required by order restraining and modifying temporary restraining order.

17. Statement of evidence.
18. This Præcipe with acceptance of service.

Dated this 1st day of May, 1924.
C. J. Roberts, Attorney for Appellant, Santa Fe, New Mexico.

Notice of filing Præcipe for record is hereby waived and acknowledgment is made that a copy of this Præcipe was served on me this 1st day of May, 1924.
Milton J. Helmick, Attorney for Defendants-Appellees.

[fol. 50] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Wm. Rose, Clerk of the District Court of the United States for the District of New Mexico, do hereby certify that the above and foregoing, consisting of 49 pages, constitutes a full and perfect transcript of the record and proceedings in said cause, as shown from the files and record of my office therein, and as called for by appellant's præcipe for transcript on page 48 thereof; except the Citation on Appeal, at page one thereof, which is the original citation.

Witness my hand and the seal of said Court, at Santa Fe, in said District, on this 24th day of May, A. D. 1924.
Wm. Rose, Clerk. (Seal of the United States District Court, District of New Mexico.)

Endorsed on cover: File No. 30,401. New Mexico D. C. U. S. Term No. 436. Fidelity and Deposit Company of Maryland, appellant, vs. J. M. Luna, chairman, and Hugh H. Williams and Bonifacio Montoya, members, constituting the State Corporation Commission of New Mexico, et al. Filed June 7th, 1924. File No. 30,401.